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BEFORE THE IDAHO PERSONNEL COMMISSION

LARRY MORRISS,)	
)	
Appellant-Petitioner,)	IPC No. 95-21
)	
v.)	DECISION AND ORDER ON
)	PETITION FOR REVIEW
IDAHO DEPARTMENT OF)	
CORRECTION,)	
)	
Respondent.)	
_____)	

On petition for review from the decision of the Hearing Officer, Bergquist, Kenneth G., presiding. Petitioner Larry Morriss appeared through his counsel of record, Brian B. Benjamin, Randall, Blake & Cox, P.A., Lewiston, Idaho. Respondent Idaho Department of Correction (DOC) appeared through its counsel of record, Leslie L. Goddard and Margaret Hughes, Deputy Attorneys General, Civil Litigation Division, Boise, Idaho.

Morriss petitions for review from the Hearing Officer's decision upholding DOC's dismissal of Morriss from the classified service. The Hearing Officer found that DOC established by a preponderance of the evidence that Morriss had either brought contraband into the Orofino institution or was involved with contraband being brought into the institution. Accordingly, the Hearing Officer ruled that Morriss was properly dismissed pursuant to IDAPA 28.01.01.190.01.a and 190.01.e. We REMAND.

I.

BACKGROUND

This is a disciplinary dismissal case under Rule 190 of the Idaho Personnel Commission Rules. DOC dismissed Morriss from classified employment as a Correctional Officer at the Idaho Correctional Institution at Orofino pursuant to IDAPA 28.01.01.190.01.a and 190.01.e. Specifically, this case arises from events leading up to the charge that Morriss was bringing or was involved with bringing contraband into the facility.

The record and briefs of the parties reflect that DOC officers reported that inmates had named Morriss in conjunction with drug investigations. Another DOC officer claimed that Morriss appeared nervous when interviewed during an investigation into the matter. DOC also produced the results of polygraph examinations administered to Morriss and an inmate, Morriss' indicating failure with respect to his denial of drug involvement, and the inmate's indicating truthfulness with respect to the allegation that Morriss was involved with drugs at the facility. The record also reflects that Morriss failed to immediately submit Officer Information Reports concerning inmates who asked him to supply them with drugs. Morriss was ultimately given notice and an opportunity to respond, was dismissed by DOC, he filed a timely grievance which was heard by an impartial review panel (recommending dismissal), and appealed DOC's decision to the Idaho Personnel Commission. The Hearing Officer upheld his dismissal, and the matter is now before the full Commission on petition for review.

II.

ANALYSIS

We are presented with four issues: (1) whether the polygraph reports were properly admitted into evidence; (2) whether the Hearing Officer properly relied upon hearsay testimony; (3) whether dismissal was too harsh a sanction; and (4) whether the department met the burden

for establishing proper cause, under Rule 190, for disciplinary action. We address the first two issues below. However, we are unable to answer the third and fourth questions with the record created by the parties. For that reason, we remand the case to Hearing Officer Bergquist for further proceedings consistent with the analysis and questions set forth below.

A. The Polygraphs Are Admissible.

Morriss argues that polygraphs are not admissible in Idaho courts, citing *State v. Fain*, 116 Idaho 82, 774 P.2d 252 (1989), and *State v. Grube*, 126 Idaho 377, 883 P.2d 1069 (1994). In the context of this civil, administrative hearing, the *Fain* and *Grube* decisions are clearly not controlling, particularly in light of Idaho Code Section 44-904, which permits law enforcement agencies and other political subdivisions to rely on polygraphs in the employment context. Thus, by statute the polygraphs are admissible and may be relied upon by DOC.

B. Relevant Hearsay Is Admissible.

Without reaching the issue of whether hearsay alone can support a finding of fact, we hold that *relevant* hearsay is admissible in the context of Idaho Personnel Commission hearings. Our hearings are governed by Idaho Rule of Administrative Procedure 600. IDAPA 04.11.01.600; *see* IDAPA 28.01.01.201.01. This rule permits the admission of evidence "if it is of a type commonly relied upon by prudent persons in the conduct of their affairs." *Id.* It also states that the Idaho Rules of Evidence do not apply to administrative hearings, and it permits the Hearing Officer to exclude evidence which is "irrelevant, unduly repetitious, inadmissible on constitutional or statutory grounds or on the basis of any evidentiary privilege" *Id.* Thus, so long as the hearsay is relevant and is not barred by other grounds set forth in the rule, the Hearing Officer must allow it and may consider it in reaching a decision.

C. Questions on Remand.

On remand, the Hearing Officer shall make further findings of fact, and take further evidence and testimony if necessary, and make any necessary conclusions of law with respect to the following issues and questions:

(1) Whether the polygraph examination was properly administered by a qualified person, including the circumstances surrounding the actual examination of Morriss and the inmate, the meaning and reliability of the polygraph results, and any other necessary foundational testimony and evidence.

(2) The nature of the so-called report or record allegedly destroyed by Morriss, including its purpose, contents, and the relevance of its destruction.

(3) Whether the inmates who allegedly made allegations against Morriss, or otherwise named Morriss in the context of the underlying investigations, can provide testimony or evidence to support the hearsay statements made by the DOC witnesses and/or contained in the investigative reports.

(4) Whether contraband or illegal drugs were ever found at the institution or in the possession of Morriss in the context of the underlying investigations.

III.

CONCLUSION

For the reasons set forth above, we REMAND this matter to the Hearing Officer consistent with the holdings, analysis and questions set forth above.

IT IS SO ORDERED.

DATED this 20th day of October, 1997.

BY ORDER OF THE
IDAHO PERSONNEL COMMISSION

/s/ _____
Sherry Dyer, Acting Chair

/s/ _____
Peter Boyd

/s/ _____
Don Miller¹

¹ Commissioner Wieneke did not participate in this matter. Commissioner Barrett's term expired before the oral argument.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing DECISION AND ORDER ON PETITION FOR REVIEW in *Morriss v. Idaho Dep't of Correction*, IPC No. 95-21, was delivered to the following parties by the method stated below on the 20th day of October, 1997.

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